

**IN THE HIGH COURT OF TANZANIA
AT MWANZA**

MISC.CIVIL APPL. NO. 100 OF 2005

***(Arising from Mwanza D/Court Estate Revision No.1/2004,
originating from Urban P/Court Estate Case No.91/2004)***

SAID ABDALLAH.....APPLICANT

Versus

JULIANA NG'HWANI.....RESPONDENT

21/9/2006 & 7/11/2006

RULING

RWEYEMAMU,J:

This is an application by **Saida Abdallah** to appeal the District Court (DC) ruling dated 8/12/2004, out of time. She appeared in person for hearing. The same is opposed by the respondent who was represented by two Senior Counsels Mr. Kahangwa and Butambala Advocates while the applicant appeared in person.

Arguing the application, the applicant repeated the contents of her affidavit and of relevancy that:-

"--- my failure to file the appeal in time was caused by the District Court's failure to supply me a copy of proceedings and Ruling and thereafter the exchequer receipt to evidence purchase of the said documents. A copy of the Ruling is appended hereto and marked as annexure E"

In response the respondents submitted that; the applicant has "not has not attached any letter to indicate that she applied for the documents but (the same) was not supplied, and that the receipt only shows when she purchased proceedings not when she applied for the same; that the applicant has not shown diligence in following

ups the matter; and further that the appeal has no chances of success. In response the applicant claimed (without substantiation) that she started making a follow up in July 2004.

The critical issue to be decided in these kinds of application is whether the applicant has shown sufficient reasons for delay, and in part whether the intended appeal has overwhelming chances of success.

On the parties' submissions, I agree with submissions by the respondent that the applicant has not shown sufficient reasons for delay- she blames the court for not supplying her with necessary papers for appeal purposes, yet she made no attempt to show what steps she took, and took in time to obtain the said documents.

Despite my said conclusion, I will grant this application and not because I have considered chances of success of the appeal, but because I believe in the background of this case, it is in the interest of justice that an appeal against the DC ruling be permitted to be heard. Why so?

On going through the disputed ruling subject matter of this application, it appears to me that there is some confusing/disconcerting state of affairs in this long standing probate based dispute. As a result, the question of ownership of the property of the deceased identified as Plot 186 T Karuta street Mwanza Township has not been brought to closure.

1. The probate case was adjudicated in the primary court case.38/86 which was appealed in DC 1/87 and finally High

Court PC 114/87 – where an appeal by one **Fatuma Kherry** was dismissed. That decision was not appealed.

2. Another application to administer the same estate was unsuccessfully filed by one Hamidu Mabuki Mohamed as PC civil case 99/93. That application was dismissed on 11/4/94.
3. Another petition was filed over the same property in the High Court Probate 1/98 by **Fatuma Kherry**; and issued 4/4/2003. It would appear Fatuma Kherry has since died, and the present applicant's filing of PC probate 91/2004 subject of the DC ruling sought to be appealed, was based on the fact of Fatuma Kherry's death.

It is not clear how/why probate 1/98 (yet to be closed), was filed despite the fact that the matter was adjudicated on in HC PC 114/87. It is for that reason I find it to be in the interest of justice that the appeal be heard, so that all these issues will be considered, a decision given to bring to closure this long pending matter.

This application is granted for that reason. Each party shall bear its own costs.

Sgd: R.M. RWEYEMAMU
JUDGE
7/11/2006

Date: 7/11/2006

Coram: Hon. R. M. Rweyemamu, J

Applicant: Present

Respondent: Mr. Butambala Advocate

C/Clerk: J. Lwiza

Court: Ruling delivered this 7/11/2006 as per coram above.

**Sgd: R. M. RWEYEMAMU
JUDGE
7/11/2006**

ORDER: The applicant to file the intended appeal in a period not more than 30 days from the delivery of this Ruling.

**Sgd: R. M. RWEYEMAMU
JUDGE
7/11/2006**